

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 12, 2004

Opinion No. 04-113

Nepotism Act as Applied to State Park Employees

QUESTIONS

A “hospitality manager 3” was recently reassigned from one park to another. This is the top-level manager at the Inn and Restaurant. The hospitality manager 3 has a sister-in-law who is employed as a servitor at his new assignment. The hospitality manager 3 is not the direct supervisor of his sister-in-law or any of the servitors. The servitors are directly under the supervision of a “hospitality assistant.” The hospitality assistant is supervised by a “hospitality manager 2.” Therefore, the hospitality manager 3 neither evaluates nor reviews the evaluations of servitors. However, the hospitality manager 3, as the top-level manager of the Inn and Restaurant, has the authority and does generally direct the activities of all of the Inn and Restaurant employees, including the servitors.

1. Does the above-described situation violate the Tennessee State Employees Uniform Nepotism Policy Act of 1980, Tenn. Code Ann. § 8-31-101, *et seq.*?
2. If in the above-described situation the hospitality manager 3 supervised the person responsible for doing evaluations of the related servitor and thus would be the reviewer of the servitor’s evaluations, would there be a violation of the Act?

OPINIONS

1. The above-described factual situation is not a violation of the Tennessee State Employees Uniform Nepotism Policy Act of 1980 if the supervisory authority of the hospitality manager 3 over the Inn and Restaurant employees cannot be construed to be solely applicable to his sister-in-law.
2. The situation described in question 2 would violate the Tennessee State Employees Uniform Nepotism Policy Act of 1980 because the hospitality manager 3 would be in the direct line of supervising the job performance of his sister-in-law.

ANALYSIS

1. The Tennessee State Employees Uniform Nepotism Policy Act of 1980 (Act) is set forth in Tenn. Code Ann. § 8-31-101 *et seq.* The Act does not define nepotism *per se*; however, a dictionary definition provides that nepotism is “patronage or favoritism based upon family relationship.” Random House Webster’s College Dictionary 886 (2nd ed. 1999). Analysis under this Act depends largely on the factual setting. Op. Tenn. Att’y Gen. 82-505 (November 8, 1982) (promotion of a brother does not violate the Act if it does not result in one brother supervising the job performance or work activities of another brother). The definitions used in the chapter are provided in Tenn. Code Ann. § 8-31-102 as follows:

(1) "Governmental entity" means any state agency, authority, board, commission, department, or office within the executive or judicial branch of state government or any autonomous state agency, authority, board, commission, department, office, or institution of higher education; provided, that "governmental entity" does not include any agency or office of the legislative branch;

(2) "Relative" means a parent, foster parent, parent-in-law, child, spouse, brother, foster brother, sister, foster sister, grandparent, grandchild, son-in-law, brother-in-law, daughter-in-law, sister-in-law, or other family member who resides in the same household; and

(3) "State employee" means any person who is employed by a governmental entity.

Tenn. Code Ann. § 8-31-103 prohibits the direct supervision of relatives as follows:

Within each governmental entity, no state employees who are relatives shall be placed within the same direct line of supervision whereby one (1) relative is responsible for supervising the job performance or work activities of another relative; provided, that to the extent possible, the provisions of this chapter shall not be construed to prohibit two (2) or more such relatives from working within the same state governmental entity.

Relatives, as defined in Tenn. Code Ann. § 8-31-102(2), are in the same direct line of supervision if one relative is responsible for supervising the individual job performance or work activities of another relative. The factual situation at issue in question 1 makes it abundantly clear that the hospitality manager 3 has no involvement in supervising the job performance of his sister-in-law. In applying Tenn. Code Ann. § 8-31-103, the relevant portion of the statute is “whereby one (1) relative is responsible for supervising the job performance *or work activities of another relative* . . .” (Emphasis added). A hospitality manager 3 is the top-level manager of the Inn and Restaurant. Although the hospitality manager 3 does not supervise the servitors’ job performance, according to the given factual situation, the hospitality manager 3 “has the authority and does generally direct the activities of all of the Inn and Restaurant employees, including the servitors.”

The given factual situation does not give specific information about the hospitality manager 3's authority generally to direct the activities of all the Inn and Restaurant employees. This Office has previously opined that, when an administrator has the responsibility for recommending actions relative to the job performance or work activities of a relative, that situation is prohibited under the Act if the recommendations are applicable solely to the relative as opposed to actions which are applicable to a number of employees. Op. Tenn. Att'y Gen. 84-264 (September 20, 1984). In the given scenario, if the hospitality manager 3 directs the activities of all the Inn and Restaurant employees and those directions are not applicable individually and solely to his sister-in-law, then the situation described does not violate the Act.

2. In the hypothetical at issue in question 2, the hospitality manager 3 supervises the person responsible for evaluating the servitor who is a relative and, therefore, would be the reviewer of the servitor's evaluations. In this case, one relative is responsible for supervising the job performance of another relative, as described in Tenn. Code Ann. § 8-31-103. It is this Office's opinion that this scenario would violate the Act, because the relatives are in the same direct line of supervision.

As we previously opined, application of this chapter is to be given a liberal construction as evidenced by the last clause of Tenn. Code Ann. § 8-31-103 that states that "the provisions of this chapter shall not be construed to prohibit two (2) or more such relatives from working within the same state governmental entity." Furthermore, Tenn. Code Ann. § 8-31-104 provides for the transfer of spouses who are in violation of Tenn. Code Ann. § 8-31-103 so as to avoid conflict with the chapter's prohibitions. Transferring one of the relatives in the given hypothetical situation would thus cure the violation.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SOHNIA W. HONG
Assistant Attorney General

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Requested by:

Betsy L. Child
Commissioner
Tennessee Department of Environment and Conservation
21st Floor, L&C Tower
401 Church Street
Nashville, TN 37243